IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.3293 OF 2004

Dalpat T.Anjaria & Ors. ...Petitioners.

Vs.

Municipal Corporation Gr.
Mumbai & Ors. ...Respondents.

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Mr.Shailesh Shah with Mr.Nitya Sunil for the Petitioners.

Mrs.A.R.Joshi for Respondent No.1.

Mr.Tushar Bhavsar for Respondent Nos.6, 7 & 18.

Mr.Suresh Padwal for Respondent Nos.8 to 17. 20 & 21.

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CORAM : DR.D.Y.CHANDRACHUD, J.

February 22, 2005.

ORAL JUDGMENT :

1. Rule, returnable forthwith. The Respondents waive service. By consent taken up for hearing and

final disposal.

2. The Petitioners are purchasers of diverse flats situated in a building known as Vishal Towers at 107, Motishaw Lane, Mazgaon, Mumbai-400 010. Respondent Nos.4 to 7 are stated to be Trustees of a Trust by the name and style of J.R.Mehta Family Trust which had carried on business in the name and style of Shreeji Builders. The Trust is a lessee of a plot of land bearing City Survey No.1/397 (part) admeasuring 1467.39 sq.mtrs. In 1994, the Trust commenced development of the property under Development Control Regulation 33(7) and agreements were entered into with the erstwhile tenants. It has been stated that Respondent Nos.8 to 21 are the erstwhile tenants on the property. The Trust agreed to give alternative accommodation to the erstwhile tenants in the building which was to be constructed on the plot of land. A building consisting of a ground and 13 floors was constructed and possession was handed over to the purchasers of flats or, as the case may be, of shops commencing from January 2000 until 30th September 2004 of which details have been furnished in Exh.C to the Petition. The Petitioners are flat

purchasers and have averred that from time to time they paid to the Municipal Corporation, their share of proportionate taxes and repair cess proportionate to the area occupied by them. According to the Petitioners, Respondent Nos.8 to 21 neglected to contribute their proportionate share of the property taxes and repair cess. This was pointed out to the Municipal Corporation in a letter dated 27th November 2002 addressed on behalf of a proposed Co-operative Housing Society that is to be formed of the flat owners. Respondent Nos.4 to 7 who are the trustees of the Trust which carried out development are also stated to hold three flats in the building which has been constructed viz., Flat Nos.101, 104 and 201. According to the Petitioners, there was default on the part of Respondent Nos.4 to 7 also in making payment on account of property taxes and other dues. The Municipal Corporation issued six notices on 30th June 2003 levying penalty for the delayed payment, or as the case may be, non-payment of property taxes and repair cess. A warrant of attachment was thereafter issued on 30th September 2003 which was followed by another warrant on 26th June 2004. The warrant of attachment dated 26th

June 2004 was stated to have been issued in the name of the Secretary of the Co-operative Society on account of alleged arrears of Rs.25,50,113/-. On 2nd August 2004, a notice was issued by the Municipal Corporation intimating that auction would be held of the property on 27th August 2004 for the recovery of the sum of Rs.25,51,520/-. That led to the institution of these proceedings.

3. The Petitioners relied upon the provisions of Section 209 of the Mumbai Municipal Corporation Act, 1888 and submitted before the Court that the attachment which has been levied as well as the auction sale that was threatened was on account of the defaults of other flat owners. According to the Petitioners, they having paid their proportionate share of property taxes and repair cess, it was necessary for the Municipal Corporation to move against those occupiers who are in default and that it was not, therefore, lawful or appropriate to penalise the Petitioners who had contributed their share of the outstanding dues to the Municipal Corporation.

4. When this matter came up for hearing on 14th

October 2004, F.I.Rebello, J. noted that the situation which had arisen in the present case, arose in several matters before the Court where on account of the failure to either form a cooperative society or to transfer ownership to a society, occupants have to face adverse consequences. The Court was of the view that appropriate directions have to be issued to protect such occupants who have lawfully purchased the premises on payment of the amounts due and at the same time it was necessary at the interim stage to issue directions which would protect, on the one hand, the interest of the purchasers and on the other hand, the revenue of the Municipal Corporation. In the circumstances, an order was passed on 14th October 2004 directing the deposit in this Court of various payments by several amongst the party Respondents who were in arrears. The directions were as follows :

> "(i) Respondents Nos.4 to 7 and 18 to deposit in this Court within 7 days from today a sum of Rs.1,07,460/- as their dues.
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> (ii) Respondents Nos.8 to 17 and 20 to 21 to

deposit in this Court within 4 weeks from today a sum of Rs.10,83,402/- as their dues.

(iii) Respondent No.19 to deposit in this Court within one week from today a sum of Rs.52,869/- as her dues.

(iv) Insofar as the penalty is concerned, respondent No.4 to 7 continue to be the owners of the property. Pending further orders, in order to protect the interests of the parties, respondents Nos.4 to 7 are further directed to deposit in this Court within 7 days from today a sum of Rs.5,83,713/-."

5. On 4th November 2004, time to deposit the amount of Rs.5,83,713/- was extended till 30th November 2004. This Court recorded that the ends of justice will be met if the Respondents who are occupants, were directed to pay their pro rata contribution of taxes in the hands of the association, presently represented by the Petitioners, within a period of 15 days. The Petitioners were thereafter, to make payment to the Municipal Corporation. This system, the Court

directed, will continue till such time as the society is formed whereupon all contributions will be paid to the society and the society in turn, will pay the amounts to the Corporation. On 17th December 2004, the Municipal Corporation was directed to submit a scheme to this Court for recovery of amounts from defaulting members of cooperative societies in order to ensure that the members who otherwise continue to pay their dues are not made to suffer consequences of an order of attachment and sale.

6. The Municipal Corporation has filed an affidavit in these proceedings of the Deputy Assessor and Collector on 21st February 2005. The affidavit notes that under Sections 140 and 154 of the Mumbai Municipal Corporation Act, 1888, the Corporation treats a property which has been developed as one unit. However, there are frequent complaints from Co-operative Societies to the effect that on account of a default by a few members, the society is not in a position to remit the entire outstandings of the Corporation towards property taxes and other dues. The affidavit notes that the Municipal Corporation has received

requests from Co-operative Societies to recover taxes from tenant-members directly and to take action directly for recovery against individual owners instead of an entire society.

7. Section 209A of the Act is in the following terms:

> "209A. When tenant-members may be held liable for payment of property taxes due from co-operative housing societies. - (1) Notwithstanding anything contained in the Maharashtra Co-operative Societies Act, 1960 or any other law for the time being in force, if any sum due on account of any property tax, in respect of any property owned by a co-operative housing society registered under that Act, remains unpaid, after a bill for the same has been duly served on the society primarily liable for the payment thereof, the Commissioner may serve a bill on each of the tenant-members of the society for such portion of the sum due as bears to the whole amount due the same ratio which the rent estimated under section 154 in respect of his tenement

bears to the aggregate amount of estimated rent for the whole property.

(2) If the tenant-member fails within fifteen days from the service of any such bill to pay the amount therein claimed, the same amount may be recovered from him, as if the amount were a property tax due by him.

(3) If any sum is paid by, or recovered from, a tenant-member under this section, he shall be entitled to credit thereof in account with the society primarily liable for the payment of the same.

Explanation. - For the purposes of this Section, the expression "tenant-member" in the case of a tenant co-partnership co-operative housing society, means a member of such society to whom a tenement has been allotted by the society in the building owned by it."

8. Apart from the aforesaid provision, Section 209 also provides that if the person primarily liable for the payment of property taxes does not pay the

amount due under the bill after it has been duly served and if the said person is not an occupier of the premises in respect of which tax is due, the Commissioner may serve a bill of the amount due on the occupier of the premises. The Corporation in its affidavit has stated that it is agreeable to issue individual bills to tenant-members of cooperative Societies in respect of their individual premises on the basis of the area of each unit and the rateable value thereof taking into account the ratio which the rent estimated under Section 154 in respect of each tenement bears to the aggregate amount of estimated rent for the whole property. The Municipal Corporation has, however, stated that before this course of action is adopted under Section 209A, an application should be furnished by the Society concerned with full details of the members and a statement that in the event that the Municipal Corporation is constrained to sell the individual premises of a defaulting member in realisation of the share of such member in the outstanding property taxes, the society would accept the auction purchaser as its member. Subject to the Municipal Corporation receiving a request from the Co-operative Society

and the agreement of the Society to recognise the auction purchaser as a transferee member, the Municipal Corporation has agreed to assess individual flats separately and to issue separate bills in respect of each flat. In its affidavit, the Municipal Corporation has also stated that in case of any default towards the payment of property taxes, action would be taken against the individual flat owner or occupier, as the case may be, by attaching and auctioning the flat of the defaulting member alone, subject to the condition that the purchaser would obtain a right of membership in the society in place of the defaulting member.

9. The affidavit which has been filed by the Municipal Corporation in compliance with the directions which were issued by the Court during the pendency of these proceedings is in implementation of its obligation under Section 209A of the Mumbai Municipal Corporation Act, 1888. The object of Section 209A is to ensure that the general body of members who comprise of a Co-operative Housing Society should not be made to suffer on account of a default of one or more of its members who fail and neglect to pay their

outstandings to the Corporation. The Municipal Corporation is now directed to follow the scheme which it has placed before the Court in terms of its obligation under Section 209A uniformly in other cases as well without requiring each individual Society to approach the Court for the grant of relief. The Municipal Corporation has agreed to do so in its affidavit dated 21st February 2005 and its assurance is accepted and recorded.

10. In so far as the facts of this case are concerned, Counsel appearing on behalf of the Petitioners and the Respondents state that all the payments which were directed to be made in the order of this Court dated 14th October 2004 have been duly deposited with the Prothonotary and Senior Master. The Municipal Corporation is granted permission to withdraw the aforesaid amounts towards its outstandings. During the pendency of these proceedings, the Municipal Corporation has raised further bills in the amount of Rs.4,39,225/- for the period upto 31st March 2005. Counsel appearing on behalf of the Petitioners and Respondent Nos.2 to 29 state that

the Petitioners have contributed pro rata an amount of Rs.3,10,564/- towards meeting their liability in respect of the aforesaid bill. Of the balance of Rs.1,28,661/- that remains, Counsel appearing on behalf of Respondent Nos.8 to 17, 20 and 21 states that an amount of Rs.1,20,376/- shall be paid directly to the Municipal Corporation on or before 4th March 2005. Counsel appearing on behalf of Respondent Nos.6, 7 and 18 states that an amount of Rs.8,285/- will be paid to the Municipal Corporation within a period of one week from today. In so far as future payments are concerned, the Municipal Corporation shall now act in pursuance of its statement made on affidavit before this Court. In the interim order of this Court dated 14th October 2004, Respondent Nos.4 to 7 were directed to deposit an amount of Rs.5,83,713/- which was claimed by the Corporation as penalty. This amount, as noted earlier, has been deposited and has been permitted to be withdrawn by the Municipal Corporation. This would be without prejudice to the rights of Respondent Nos.4 to 7 to adopt such remedies as are open in law in regard to the assessment of penalty by the Municipal Corporation. The Municipal Corporation has issued a warrant of

attachment and a sale notice for the recovery of its outstanding dues. These dues have been deposited before the Court and permission has been granted to the Municipal Corporation to withdraw the same. In that view of the matter, the warrants of attachment dated 30th December 2003 and 26th June 2004 (Exh.E and E1) and the sale notice dated 2nd August 2004 (Exh.F) shall not be enforced any further. This would, however, not preclude the Municipal Corporation from taking recourse to its rights in law, should there be any default in future. Since Respondent Nos.4 to 7 have deposited before this Court, the amounts that were found to be due and outstanding, the attachment which was levied in pursuance of the direction dated 10th December 2004 shall similarly stand lifted. The Petition is disposed of in these terms. There shall be no order as to costs.

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